



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Ms. Zindia T. Thomas
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-7578

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189462.

The Office of the Attorney General (the "OAG") received a request for copies of the "procedures and processes of a Medicaid Fraud investigation." You state that the OAG has released most of the responsive information, which consists of the Medicaid Fraud Control Unit's Investigator Training Manual (the "manual") and an Agreement (the "agreement") between the Texas Health and Human Services Commission (the "commission") and the OAG. You claim, however, that portions of the manual and agreement are excepted from disclosure under section 552.108(b) of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security

or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under Gov't Code § 552.108), 341 (1982) (release of certain information from Texas Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (Gov't Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Generally known policies and techniques, however, may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under Gov't Code § 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert that the release of certain portions of the manual will reveal investigative techniques used by the Medicaid Fraud Control Unit when investigating certain types of fraud. You also claim that by revealing the documents and databases used in an investigation, a provider will know which types of information to manipulate in order to cover up fraudulent activity. After reviewing your arguments and the submitted manual, we agree that the release of portions of the manual will reveal specialized investigative techniques and information that will hinder a Medicaid fraud investigation. We have marked the portions of the manual that may be withheld under section 552.108(b)(1). We note, however, that the remaining portions of the manual describe routine investigative techniques and other information common to a Medicaid fraud investigation. You have not adequately demonstrated, nor can we discern, how the release of this information will interfere with your crime prevention efforts. Accordingly, the remaining portions of the manual must be released.

You also seek to withhold the portion of the agreement that describes the arrangement between the OAG and the commission regarding the use of Medicaid identification cards in undercover investigations. You assert that the disclosure of this information will show fraudulent providers how to acquire these cards. However, after reviewing the agreement, we find that the OAG has failed to demonstrate this assertion. Furthermore, you have not otherwise explained how the release of this information will interfere with your crime prevention efforts. Thus, the OAG must release the agreement in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

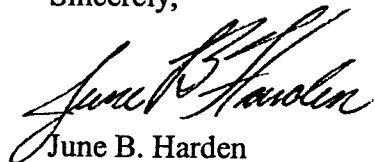
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 189462

Enc: Submitted documents

c: Mr. Javier E. Rojo
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(w/o enclosures)